

# *Documents on Diplomacy: The Source*

## *Excerpts from States and Treaties*

*The President of Congress to State Governors, New York, April 13, 1787*

Sir;  
Our Secretary for foreign affairs has transmitted to you Copies of a letter to him from our Minister at the Court of London of the 4<sup>th</sup> day of March 1786, and of the papers mentioned to have been enclosed with it.

We have deliberately and dispassionately examined and considered the several facts and matters urged by Britain as infractions of the Treaty of peace on the part of America; and we regret that in some of the States too little attention appears to have been paid to the public faith pledged by that Treaty.

Not only the obvious dictates of Religion, Morality and National honor, but also the first principles of good policy, demand a candid and punctual compliance with engagements constitutionally and fairly made. Our National constitution having committed to us the management of the National concerns with foreign States and powers; it is our duty to take care, that all the rights which they ought to enjoy within our Jurisdiction by the Laws of Nations, and the faith of Treaties remain inviolate. And it is also our duty to provide that the essential interests and peace of the whole confederacy be not impaired or endangered by deviations from the line of public faith into which any of its members may from whatever causes be unadvisedly drawn.

Let it be remembered that the Thirteen Independent Sovereign States have by express delegation of power formed and Vested in us a general, though limited Sovereignty, for the general and National purposes specified in the Confederation. In this Sovereignty they cannot severally participate (except by their delegates) nor with it have concurrent Jurisdiction; for the Article of the Confederation most expressly conveys to us, the sole and exclusive right and power of determining on War and peace, and of entering into Treaties and Alliances &c.

When therefore a Treaty is Constitutionally made, ratified and published by us, it immediately becomes binding on the whole Nation, and superadded to the Laws of the land, without the intervention of State legislatures. Treaties derive their obligation from being compacts between the Sovereign of this, and the Sovereign of another Nation, whereas Laws or Statutes derive their force from being the Acts of a Legislature competent to the passing of them. Hence, it is clear that Treaties must be implicitly received and observed by every member of the Nation; for as State Legislatures are

not competent to the making of such Compacts or Treaties, so neither are they competent in that capacity, authoritatively to decide on, or ascertain the construction and Sense of them. When doubts arise respecting the construction of State Laws, it is not unusual nor improper for the State Legislatures by explanatory or declaratory Acts to remove those doubts. But the case between Laws and Compacts or Treaties is in this widely different, for when doubts arise respecting the sense and meaning of a Treaty they are so far from being cognizable by a State Legislature that the United States in Congress Assembled have no authority to settle and determine them. For as the Legislature only which constitutionally passes a Law has power to revise and amend it, so the Sovereigns only who are parties to the Treaty have power by mutual consent, and posterior Articles to correct or explain it.

In cases between Individuals all doubts respecting the meaning of a Treaty, like all doubts respecting the meaning of a Law are in the first instance mere Judicial questions, and are to be heard and decided in the Courts of Justice having cognizance of the causes in which they arise, and whose duty it is to determine them according to the Rules and maxims established by the laws of Nations for the interpretation of Treaties. From these principles it follows of Necessary consequence that no individual State has a right by Legislative Acts to decide and point out the sense in which their particular Citizens and Courts shall understand this or that Article of a Treaty.

It is evident that a contrary doctrine would not only Militate against the common and established maxims and ideas relative to this subject, but would prove no less inconvenient in practice than it is irrational in Theory; for in that case the same Article of the same Treaty might by Law be made to mean one thing in New Hampshire, another thing in New York, and neither the one nor the other of them in Georgia.

How far such Legislative Acts would be Valid and obligatory even within the limits of the State passing them, is a question which we hope never to have occasion to discuss. Certain however it is that such Acts cannot bind either of the contracting Sovereigns, and consequently cannot be obligatory on their respective Nations.

But if Treaties and every Article in them be (as they are and ought to be) binding on the whole Nation, if individual States have no right to accept some Articles and reject others, and if the

impropriety of State Acts to interpret and decide the sense and construction of them be apparent; still more manifest must be the impropriety of State Acts to control, delay or modify the operation and execution of these National compacts.

When it is considered that the several States Assembled by their delegates in Congress have express power to form treaties, surely the Treaties so formed are not afterwards to be Subject to such alterations as this or that State Legislature may think expedient to make, and that too without the consent of either of the parties to it—That is in the present case without the consent of all the United States who collectively are parties to this Treaty on the one side and his Britannic Majesty on the other. Were the Legislatures to possess and to exercise such power, we should soon be involved as a Nation in Anarchy and confusion at home, and in disputes which would probably terminate in hostilities and War with the Nations with whom we may have formed Treaties. Instances would then be frequent, of Treaties fully executed in one State, and only partly executed in another, and of the same Article being executed in one manner in one State, and in a different manner or not at all in another State. History furnishes no precedent of such liberties taken with Treaties under form of Law in any Nation.

Contracts between Nations like Contracts between individuals should be faithfully executed, even though the Sword in the one case and the Law in the other did not compel it. Honest Nations like honest men require no constraints to do Justice; and though Impunity and the Necessity of Affairs may sometimes afford temptations to pare down contracts to the measure of Convenience yet it is never done but at the expense of that esteem, and confidence, and credit, which are of infinitely more worth than all the momentary advantages which such expedients can extort. But although contracting Nations cannot like individuals avail themselves of Courts of Justice to compel performance of Contracts; yet an appeal to heaven and to Arms is always in their power, and often in their inclination.

But it is their duty to take care that they never lead their people to make and support such appeals, unless the Sincerity and propriety of their conduct affords them good reason to rely with confidence on the Justice and protection of Heaven.

Thus much we think it useful to observe in order to explain the principles on which we have unanimously come to the following Resolution *Viz* “Resolved That the Legislatures of the several States cannot, of right pass any act or acts for interpreting, explaining or construing a National Treaty, or any part or clause of it, nor for restraining, limiting or in any manner impeding, retarding or counteracting the operation and execution of the same, for that on being constitutionally made, ratified and published they become in Virtue of the Confederation part of the Law of the Land, and are not only independent of the will and power of such Legislatures but also binding and obligatory on them.”

As the Treaty of peace so far as it respects the matters and things provided for in it, is a law to the United States which cannot by all or any of them be altered or changed, all State Acts establishing provisions relative to same objects which are incompatible with it must in every point of view be improper. Such Acts do nevertheless exist, but we do not think it necessary either to enumerate them particularly, or to make them severally the subjects of discussion. It appears to us sufficient to observe and insist that the Treaty ought to have free course in its operation and execution and that all obstacles interposed by State Acts be removed. We mean to act with the most Scrupulous regard to Justice and Candor towards Great Britain, and with an equal degree of delicacy, Moderation, and decision towards the States who have given occasion to these discussions.

For these reasons we have in general terms “Resolved That all such acts or parts of Acts as may be now existing in any of the States repugnant to the Treaty of peace ought to be forthwith repealed, as well to prevent their continuing to be regarded as Violations of that Treaty as to avoid the disagreeable Necessity there might otherwise be of raising and discussing questions touching their Validity and obligation.”

Although this Resolution applies Strictly only to such of the States as have passed the exceptionable Acts alluded to, yet to obviate all future disputes and questions, as well as to remove those which now exist, we think it best that every State without exception should pass a law on the Subject. We have therefore “Resolved That it be recommended to the several States to make such repeal rather by describing than reciting the said Acts, and for that purpose to pass an Act declaring in general terms that all such Acts and parts of Acts repugnant to the Treaty of peace between the United States and his Britannic Majesty or any Article thereof shall be and thereby are repealed, and that the Courts of Law and equity in all cases and questions cognizable by them respectively, and arising from or touching the said Treaty shall decide and adjudge according to the true intent and meaning of the same, any thing in the said Acts or parts of Acts to the contrary thereof in anywise notwithstanding.”

Such Laws would answer every purpose, and be easily formed. The more they were of the like tenor throughout the States, the better. They might each recite that, Whereas certain Laws or Statutes made and passed in some of the States, are regarded and complained of, as repugnant to the Treaty of peace with Great Britain, by reason whereof, not only the good faith of the United States pledged by that Treaty, has been drawn into question, but their essential Interests under that Treaty greatly affected. And whereas Justice to Great Britain, as well as regard to the honor and Interests of the United States, require that the said Treaty be faithfully executed, and that all obstacles thereto, and particularly such as do or may be construed to proceed from the Laws of this State, be effectually removed.

Therefore:

Be it enacted by \_\_\_\_\_ and it is hereby enacted by the authority of the same that such of the Acts or parts of Acts of the Legislature of this State, as are repugnant to the Treaty of peace between the United States and his Britannic Majesty or any Article thereof, shall be and hereby are repealed; and further that the Courts of Law and equity within this State, be and they hereby are directed and required, in all causes and questions cognizable by them respectively, and arising from or touching the said Treaty, to decide and adjudge according to the Tenor, true intent and meaning of the same, any thing in the said Acts or parts of Acts to the contrary thereof in anywise notwithstanding.

Such a general Law would we think be preferable to one, that should minutely enumerate the Acts and clauses intended to be repealed; because Omissions might accidentally be made in the enumeration, or Questions might arise, and perhaps not be satisfactorily determined respecting particular Acts or clauses about which contrary opinions may be entertained. By repealing in general terms all Acts and clauses Repugnant to the Treaty, the business will be turned over to its proper department Viz the Judicial, and the Courts of Law will find no difficulty in deciding whether any particular Act or clause is, or is not contrary to the Treaty. Besides when it is considered that the Judges in general are men of Character and Learning and feel as well as know the obligations of Office, and the Value of Reputation, there is no reason to doubt, that their conduct and Judgements relative to these, as well as other Judicial matters will be wise and upright.

Be pleased Sir to lay this letter before the Legislature of your State without delay. We flatter ourselves they will concur with us

in Opinion that candor and Justice are as Necessary to true policy as they are to sound Morality, and that the most honorable way of delivering ourselves from the embarrassment of mistakes is fairly to correct them. It certainly is time that all doubts respecting the public faith be removed and that all questions and differences between us and Great Britain be amicably and finally settled. The States are informed of the reasons why his Britannic Majesty still continues to occupy the frontier posts which by the Treaty he agreed to evacuate: And we have the strongest assurances that an exact compliance with the Treaty on our part shall be followed by a punctual performance of it on the part of Great Britain.

It is important that the several Legislatures should as soon as possible take these matters into consideration, and we request the favor of you to transmit to us, an authenticated copy of such Acts and proceedings of the Legislature of your State as may take place on the Subject, and in pursuance of this Letter.

By order of Congress

A. S<sup>T</sup> C., PRESIDENT  
CHARLES THOMSON, SECRETARY

*Source*

*The Emerging Nation: A Documentary History of the Foreign Relations of the United States under the Articles of Confederation, 1780-1789*, Mary A. Giunta, Editor-in-Chief, Volume III. Washington, DC : Government Printing Office, 1996.

NA: PCC, item 122, pp. 81-88 (C); M247, reel 140.